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09/808,812	03/15/2001	Peter H. Markusch	Mo-5942/MD-00-46-PU	6332

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EXAMINER

BISSETT, MELANIE D

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 11

Application Number: 09/808,812
Filing Date: March 15, 2001
Appellant(s): MARKUSCH ET AL.

John Mrozinski, Jr.
For Appellant

EXAMINER'S ANSWER

MAILED
AUG 26 2003
GROUP 1700

This is in response to the appeal brief filed 30 June 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 12-27, which the appellant notes have been withdrawn from consideration, have been canceled.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-9 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,421,677 A	Adam et al.	06-1995
4,872,784 A	Payne	10-1989
4,968,542 A	Gasper et al.	11-1990
4,582,750 A	Lou et al.	04-1986
5,674,565 A	Kausch et al.	10-1997
5,464,919 A	Sinclair	11-1995

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-2 and 5-6 are rejected under 35 U.S.C. 102(b). This rejection is set forth in prior Office Action, Paper No. 6.

Claims 1-9 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 6.

(11) *Response to Argument*

Gasper et al. as evidenced by Sinclair and Kausch et al.

In response to the appellant's argument that the claims are drawn to layers of two different geotextiles, it is noted that the claims do not specify that the material used as a dimensionally stable material is different from the material used as a pliable geotextile. It is not the examiner's position that some of the materials in Gasper form into rigid geotextiles while others form into soft, pliable geotextiles. Rather, it is the examiner's position that the same material may function as both a dimensionally stable material and as a pliable material. In the broadest interpretation of the claims, multiple layers of the same material having both supportive and flexible characteristics would read on the appellant's claim. Although the specification exemplifies different materials for each layer, the *claims* do not distinguish such a composite from one having multiple layers of material having both stable and flexible character.

Regarding the appellant's arguments that the suggestion or indication of an element by the reference does not support anticipation, it is the examiner's position that, in this case, the examiner has used "points to" and "suggesting" to point out specific passages in the reference that teach the claimed limitations. One of ordinary skill in the art, upon reading Gasper, would recognize the reference as encompassing and teaching the claimed limitations. The examiner points to "similar" materials used in the art to show further similarities in the geotextile materials of the art and the claimed invention.

In response to the appellant's argument that Gasper fails to disclose geotextile as part of an orthopedic support, it is noted that the materials used in Gasper's invention (for example, polyester) are noted as geotextiles in the present specification (p. 7 line 14-p. 8 line 3). The examiner relies upon the appellant's definition of "geotextile" on p. 7, lines 7-9, as "any woven or non-woven porous blanket or mat which is produced from natural or synthetic fibers." The examiner has indicated that the materials of Gasper's invention meet the definition of geotextile, since Gasper teaches the impregnating of fibrous synthetic materials.

Payne in view of Adam et al., and vice versa

In response to the applicant's arguments that the inventive examples show superiority over a composite using two identical blanket layers, it is noted that it is the examiner's position that the claims do not require the layers of the composite to be different. Instead, the claims require that one layer possesses dimensionally stable

characteristics while the other layer possesses flexibility. Where the same material possesses both properties, multiple layers of the same material anticipate the claims.

The primary reference, Payne, teaches layering blanket materials.

Regarding the "different characteristics" of the geotextile layers, it is noted that, although two examples have been shown using different materials for each layer, the claims do not require that the materials be different. The appellant has not shown that the materials of the references do not meet the broad definitions of "dimensionally stable" and "pliable". Although the specification supports a preference for using different materials for each layer, subject matter from the specification should not be read into the claims.

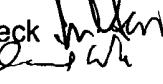
Payne in view of Adam et al., and vice versa, further in view of Lou et al.

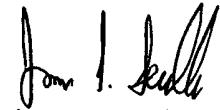
In response to the appellant's argument that one of ordinary skill in the art would not be motivated to look to further ways of improving durability, it is the examiner's position that one of ordinary skill in the art concerned with durability would consider numerous routes to optimize such an important property. The Lou reference has been provided to show that one of ordinary skill in the textile art would recognize that burnishing an organic synthetic fabric serves to improve the durability of the fabric. Thus, one concerned with improving the durability of a fabric composite would look to various teachings to optimize this property.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

mdb
August 19, 2003

Conferees
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